Editor's note: appealed - aff'd, Civ.No. 82-0774 (D.D.C. May 15, 1984)

WILLIAM J. McGRATH

IBLA 82-408 Decided March 2, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 73534.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

   A simultaneous oil and gas lease application, form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3, and multiple filing violative of 43 CFR 3112.6-1, are left unanswered.

2. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

   Reliance upon erroneous or incomplete information provided by Federal employees does not create any rights not authorized by law.

APPEARANCES: William D. Burdett, Esq., and Bruce A. Budner, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William J. McGrath has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 3, 1981, rejecting his simultaneous oil and gas lease application filed in the November 1980

drawing. His application was drawn with first priority for parcel No. WY-3636 and given serial No. W 73534. BLM rejected the application because questions (d), (e), and (f) on the application had not been answered, and, therefore, it had not been fully completed as required by 43 CFR 3112.2-1.

Appellant's application was executed, signed, and submitted on his behalf by an officer of the Federal Energy Corporation (FEC), a filing service for simultaneous oil and gas lease applications. Examination of appellant's application reveals that questions (d) through (f) on the reverse side of the card were not answered.

The applicable regulation at 43 CFR 3112.2 and 3112.2-1, states in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

> (a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

The application form clearly contemplated that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)" (italics in original). Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest or amendments to one's previously filed statement of qualifications may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7, the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

Appellant contends that it is not essential that questions (d) through (f) be answered directly on the drawing entry card itself. He asserts that BLM acted arbitrarily, capriciously, and in abuse of its discretion by refusing to accept as valid his responses to the questions, which FEC allegedly submitted on an attachment to his application. Copies of the attachment

submitted with the brief on appeal contain a statement that FEC is authorized to sign applications for appellant, followed by statements and questions that are substantially similar to those on the drawing entry card. 1/ Appellant answered "no" to each of questions (d) through (f), and then signed and dated the attachment. Thus, his answers seemingly would have qualified him to hold a Federal lease of this sort had they been entered on the application itself.

Appellant asserts that questions (d) through (f) are incorporated into the application for the purpose of assuring compliance with 43 CFR 3112.2-1(f), which states: "No person or entity shall hold, own or control any interest in more than one application for a particular parcel." He argues that subsection (f), unlike the other subsections of 43 CFR 3112.2-1, does not specify that information relating to that subsection must be included on the application card itself. The actual requirement of disclosure of that information, he asserts, is found in 43 CFR 3102.2-7(a), which states:

> The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer, or lease, if issued. [Emphasis added.]

Appellant argues that the regulations themselves imply that an application card can be "completed" by attaching to it information answering these three questions. He argues that the regulations cannot reasonably be read as forbidding the applicant to show the nonexistence of other interests in an application or lease in the same manner in which he would show the existence of other interests, viz., on a separate attached sheet.

We do not agree with appellant's interpretation of the regulations as they apply to simultaneous lease application cards. While it is true that subsection (f) of 43 CFR 3112.2-1 does not expressly require checking the appropriate box, any reasonable construction of the regulations would require that subsection to be read in the context of the whole section of which it is a component. And as noted above, in stating what must be done with the application card in order for it to constitute an application to lease, subsection (a) expressly demands completion of the card.

The information required under items (d), (e), and (f) is part of the certification of qualifications required of all applicants for oil and gas

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1/ The addendum's contents are set forth in Janet A. Rodgers, 58 IBLA 275 (1981), and Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981). Although appellant asserts the statement was filed with the application, such a statement is not found in the case file where it should be located if filed with the application. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This Board has noted in previous similar cases that the practice of FEC of filing this statement together with a copy of the agency agreement between the applicant and FEC in advance of the drawing casts doubt on whether the statement was actually attached to the application. Clyde K. Kobbeman, supra.

leases. This certificate of qualifications is applicable only to the application for which it is made. The certification must be made on all applications for lease and can neither be provided by attachment nor incorporated by reference. See Clyde K. Kobbeman, supra. The rationale for requiring a separate certification for each lease application is demonstrated by the statement attached to the brief on appeal in this case. The date of the statement submitted with the brief for appellant is July 13, 1980, and is clearly not contemporaneous with the lease application. A distinction must be drawn between the certification as to qualifications, including items (d), (e), and (f), which is made by signing the lease application, and supplemental evidence required to establish the qualifications of applicant (e.g., statement of corporate qualifications, copy of agency agreement) which may be incorporated by reference under 43 CFR 3102.2-1(c). See Clyde K. Kobbeman, supra.

Our conclusion clearly is consistent with the case appellant cites in support of his argument that BLM's decision was arbitrary and capricious, Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980). In that case the court reversed a decision of the Board that had rejected a winning entry card because Brick had not entered his name on the card in the order indicated by the card's instructions. The court found two reasons to reverse: First, the Department's regulations in effect at that time contained nothing indicating that the application cards needed to be completed precisely as specified on the card. Second, the court found the Board's disposition of Brick's appeal to be inconsistent with an earlier Board decision in which "neither the BLM nor the IBLA [had] considered the offeror's failure to enter his name in the proper order to be reason for disqualifying his offer." Id. at 216. The court held that "where the Secretary has not in the past consistently disqualified entry cards which do not strictly comply with a particular instruction on the entry card, he may not now disqualify an offer solely on the ground that it did not comply with that instruction." Id. at 217.

The court's holding was very narrow and does not apply to the facts of the instant case. In Brick the information (i.e., the name) did indeed appear on the application card, but in a nonconforming order. In contrast, appellant's application card did not contain the required information. However, even assuming the applicability of Brick to these facts, the court clearly stated that absent the two flaws discussed above, "the Secretary can properly adopt per se rules if he deems them useful in the administration of the program -- even rules the application of which may at times yield results that appear unnecessarily harsh." Id. at 216. These flaws do not exist here because the Department's regulations and the Board's decisions do provide the necessary notice and consistency with respect to the strict requirement that application cards be "completed," i.e., that the information be provided on the cards themselves. See, e.g., Janet A. Rodgers, supra; Edward Marcinko, 56 IBLA 289 (1981); John L. Messinger, 45 IBLA 62 (1980). The court also expressly stated that the phrase "signed and fully executed," which appeared in the 1979 version of 43 CFR 3112.2-1(a) (which is very similar to "completed, signed and filed," contained in the present regulation), "may be reasonably construed as requiring responses to all information blanks on the entry card, as IBLA decisions have done * * *." Brick at 216 n.8.

Appellant also argues that requiring the particular information to be entered upon the card itself is arbitrary and capricious because it serves no purpose in BLM's processing of simultaneous applications that would not be served by allowing this information to be submitted on addenda. For the reasons stated in Janet A. Rodgers, supra at 278, and Clyde K. Kobbeman, supra at 273, we reject this argument. In response to another of appellant's arguments we note that even though other BLM state offices in the past may have improperly accepted filings similar to theirs, such action by BLM employees does not constitute the inconsistency of final Departmental action that concerned the Brick court, and it does not change the disposition of the instant case. 43 CFR 1810.3(a); Clyde K. Kobbeman, supra at 273.

[2] Finally, appellant seeks to reverse the BLM decision on the basis of estoppel citing a telephone conversation between the secretary-treasurer of FEC and a BLM employee about the procedure for filling out the application cards and the delay between the November 1980 drawing and the decision rejecting appellant's application in December 1981. In Vincent D'Amico, 55 IBLA 116, 120 (1981), we examined the circumstances of the telephone conversation as follows:

> Specifically, appellants contend that on June 26, 1980, the secretary-treasurer of FEC was advised by telephone by an employee of BLM that the answers to items (d) through (f) need not accompany or appear on the lease application, but instead could be retained by FEC in its files. Relying on this advice, FEC says, it did not answer items (d) through (f) on the application. Answers to these questions on the aforementioned addendum form, signed by appellants and dated prior to the drawing at issue, are proffered on appeal. A response by the BLM employee involved contradicts appellants' contention in material part. While acknowledging that a filing service should retain in its files the answers of its clients to questions (d) through (f), the BLM employee specifically denies advising FEC that retaining such answers would eliminate the necessity to answer such questions on the application itself.

We then held that, assuming arguendo that the facts were as appellants had argued, reliance upon information or opinion of any officer, agent, or employee cannot operate to vest any right not authorized by law. 43 CFR 1810.3(c); Dermot S. McGlinchey, 38 IBLA 211 (1978); WZL Investment Corp., 36 IBLA 355 (1978); Belton E. Hall, 33 IBLA 349 (1978). The same is true in appellant's case. As we did in Vincent D'Amico, supra at 120-121, we must also rule that appellant's argument in favor of estoppel must fail because appellant cannot convincingly allege that he was ignorant of the true facts because of the clear wording of the lease application requiring the answers to questions (d), (e), and (f) to be checked and the precise language of regulation 43 CFR 3112.2-1 requiring the application to be "completed."

Insofar as the alleged delay in rejecting appellant's application we note that the delay was occasioned by other adjudication which arose out of

the November 1980 drawing, did not become final until November 24, 1981, and thus prevented any action on appellant's application until after that time.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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C. Randall Grant, Jr.
Administrative Judge

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Bruce R. Harris
Administrative Judge